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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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APR 17 2001

MCI TELECOMMUNICATIONS CORPORATION,)

Complainant,)

v.)

U S WEST COMMUNICATIONS, INC.,)

Defendant.)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EB 01-173

File No. E-97-40

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Chief, MDRD
Enforcement Bureau

SUPPLEMENTAL COMPLAINT CONCERNING DAMAGES

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Dated: April 17, 2001

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EXECUTIVE SUMMARY

The Commission found in the *1-800-4USWEST Order* that U S WEST Communications, Inc. ("U S WEST") unlawfully provided 1-800-4USWEST service in violation of section 271 of the Communications Act, as amended by the Telecommunications Act of 1996. This Supplemental Complaint explains the damages that WorldCom seeks to compensate it for the injury inflicted by U S WEST's unlawful conduct, and the methodology that WorldCom will use to estimate them.

WorldCom has the burden to prove by a preponderance of the evidence that it suffered damage as a result of U S WEST's illegal conduct. There is no genuine dispute that WorldCom suffered damage as U S WEST's 1-800-4USWEST service clearly carried calls that would otherwise have been made using WorldCom's competing services.

Therefore, the only issue for the Commission to resolve with respect to damages is the amount of the damages sustained by WorldCom. The proper measure of damages is the profits that WorldCom lost or will lose because U S WEST used its unlawful service to divert business away from WorldCom. A complainant may estimate damages using a formula based on facts established in the record.

WorldCom's damages include both profits that WorldCom has lost because U S WEST has unlawfully diverted traffic from WorldCom to itself, and profits that WorldCom will lose after U S WEST earns section 271 authorization because U S WEST has gained an illegal jump-start in the in-region interLATA business. The traffic diverted by U S WEST includes both (a) in-region interLATA calls unlawfully diverted from WorldCom by 1-800-4USWEST service and (b) other types of calls diverted from WorldCom by 1-800-4USWEST service because customers

would not have used 1-800-4USWEST service for those calls unless U S WEST provided both in-region interLATA and other services together in a bundled service offering. WorldCom will estimate the amount of its historical damages using a four-step methodology: (a) determine the volume for each type of call included in the 1-800-4USWEST service; (b) estimate the share of U S WEST's 1-800-4USWEST business that WorldCom would have won if the caller had not used 1-800-4USWEST service; (c) calculate the profits that WorldCom would have earned on the calls that U S WEST diverted by illegally providing 1-800-4USWEST service; and (d) add prejudgment interest based on the IRS rate of interest for refunds and additional tax payments. The starting point for estimating these damages is the actual traffic carried by 1-800-4USWEST service, and WorldCom is seeking discovery to obtain this information from U S WEST.

WorldCom is also entitled to "jumpstart" damages. As the Commission has already found, 1-800-4USWEST service has given U S WEST a significant jumpstart in the long-distance market. WorldCom is entitled to recover damages to the extent that U S WEST's unlawful provision of 1-800-4USWEST service is reasonably likely give U S WEST a jumpstart in the long-distance market when it obtains section 271 authorization and to enable U S WEST to capture more business from WorldCom than it would be able to capture if it had not illegally offered 1-800-4USWEST service. WorldCom is seeking discovery from U S WEST to permit it to estimate these damages.

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SUPPLEMENTAL COMPLAINT CONCERNING DAMAGES

Pursuant to the Commission's Memorandum Opinion and Order released on February 16, 2001 ("*1-800-4USWEST Order*"), and the Commission's Rule 1.722, 47 C.F.R. § 1.722, complainant WorldCom, Inc.¹ ("WorldCom"), through counsel, supplements its complaint concerning damages.

PROCEDURAL BACKGROUND

1. WorldCom filed its initial complaint on July 22, 1997. Among other things, WorldCom alleged that U S WEST's 1-800-4USWEST service violated section 271 of the Communications Act.

2. In its initial complaint, WorldCom sought, among other things, an award of "damages to [WorldCom] in an amount to be determined to compensate [WorldCom] fully for the com-

¹ MCI Telecommunications Corporation filed the original complaint in 1997. Effective September 14, 1998, MCI Telecommunications Corporation merged with WorldCom, Inc. See *1-800-4USWEST Order* ¶ 1 n.1. For simplicity's sake, this Supplemental Complaint refers to WorldCom and includes predecessor companies as part of WorldCom.

petitive injury it has suffered as a result of Defendant's anticompetitive, unreasonable and discriminatory practices in violation of the Act, with prejudgment interest at the Internal Revenue Service rate, compounded daily" and reserved the right to file a supplemental complaint concerning damages.

3. In the *1-800-4USWEST Order*, the Commission found that U S WEST unlawfully provided 1-800-4USWEST service in violation of section 271 of the Communications Act.

4. The Commission bifurcated the liability and damages aspects of this proceeding and authorized WorldCom to file a supplemental complaint concerning damages relating to its findings in that *Order*. *1-800-4USWEST Order* ¶ 31.

LEGAL STANDARDS

5. WorldCom has the burden to prove by a preponderance of the evidence that it suffered damage as a result of U S WEST's illegal conduct. *In the Matter of Sagir, Inc. v. N.E. Colorado Cellular, Inc.*, 12 FCC Rcd 1185, 1194 ¶ 26 (1997); *Barnes v. Illinois Bell Tel. Co.*, 1 F.C.C.2d 1247, 1263 ¶¶ 39, 41 (1965).

6. There is no genuine dispute that WorldCom suffered damage. As the Commission has already found, U S WEST marketed 1-800-4USWEST service as a superior alternative to long-distance services offered by legitimate providers of interLATA service, and U S WEST specifically advertised savings off of calling card rates of WorldCom and other long-distance companies. *1-800-4USWEST Order* ¶¶ 6 n.17, 24 & n.67. The Commission found "that the 1-800-4USWEST service permits U S WEST to obtain material benefits uniquely associated with the ability to include a long distance component in the Service." *Id.* ¶ 14. The material benefits

that the Commission found U S WEST obtained plainly helped U S WEST to compete against companies like WorldCom that U S WEST explicitly targeted. There can be no legitimate question that the success of 1-800-4USWEST service came at the expense of legitimate interLATA carriers and that part of that success came at the expense of WorldCom, which has a substantial share of mass market and business traffic for calling card, collect, and other types of calls that U S WEST unlawfully provided through 1-800-4USWEST service. Otherwise, U S WEST would have to make the preposterous claim that none of the calls made using 1-800-4USWEST service would have been made at all if U S WEST had not offered that service. Of course, if customers had not used 1-800-4USWEST for these calls, they would have used the services of legitimate interLATA carriers, including WorldCom. As a result, U S WEST's 1-800-4USWEST service carried calls that would otherwise have been made using WorldCom's competing services.²

7. Therefore, the only issue for the Commission to resolve with respect to damages is the amount of the damages sustained by WorldCom. The proper measure of damages is the profits that WorldCom lost or will lose because U S WEST used its unlawful service to divert business away from WorldCom. *See, e.g., Warrensburg Cable, Inc. v. United Telephone Co. of Missouri*, 67 F.C.C.2d 662, 675-77 (1978).

8. As the Commission has recognized, a complainant may estimate damages using a formula based on facts established in the record. *Sagir, Inc.*, 12 FCC Rcd at 1195 ¶ 27 & n.58 (citing *International Telecharge, Inc. v. Southwestern Bell Telephone Co.*, 11 FCC Rcd 10061,

² See Declaration of Kristin Harrison for paragraphs 6, 14, 18, 1, 23 and 28 (attached hereto as Exhibit 1).

10075-77 (1996)). Use of reasonable assumptions has also been approved in the analogous antitrust context. The Supreme Court has endorsed calculating antitrust damages using “a just and reasonable estimate . . . based on relevant data” that includes “probable and inferential, as well as direct and positive proof.” *Bigelow v. RKO Radio Pictures*, 327 U.S. 251, 265-66 (1946) (quotation and citation omitted); see *Coastal Fuels of Puerto Rico, Inc. v. Caribbean Petroleum Corp.*, 79 F.3d 182, 200 (1st Cir. 1996); *DeLong Equip. Co. v. Washington Mills Electro Minerals Corp.*, 990 F.2d 1186, 1205 (11th Cir.), *amended per curiam*, 997 F.2d 1340, *cert. denied*, 510 U.S. 1012 (1993); *Aspen Highlands Skiing Corp. v. Aspen Skiing Co.*, 738 F.2d 1509, 1525-26 (10th Cir. 1984), *aff’d*, 472 U.S. 585 (1985). This antitrust precedent is particularly relevant because U S WEST itself has argued that damages for violations of the Communications Act should be calculated based on “established antitrust principles.” *In the Matter of: Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Petition for Rulemaking of U S WEST New Media, Inc. Regarding Development of Competition and Diversity in Video Programming Distribution and Carriage*, 13 FCC Rcd 15822, 15,835 ¶ 26 & n.80 (1998) (discussing damages for unfair or discriminatory practices concerning video program access).

9. The burden of proving the amount of damages is less than the burden of proving the fact of damages because it is generally impossible to establish the exact amount of damages with mathematical precision. “With respect to the issue of how accurately damages must be measured, ‘there is a clear distinction between the [relatively high] measure of proof necessary to establish that [a plaintiff] has sustained some damage and the [relatively low] measure of proof necessary to enable the jury to fix the amount.’” *Coastal Fuels*, 79 F.3d at 200 (brackets in original) (quoting *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555, 562

(1931)). The courts have adopted this principle because “[t]he vagaries of the marketplace usually deny us sure knowledge of what plaintiff’s situation would have been in the absence” of the violation. See *J. Truett Payne Co. v. Chrysler Motors Corp.*, 451 U.S. 557, 566 (1981). “[T]he most elementary conceptions of justice and public policy require that the wrongdoer shall bear the risk of the uncertainty which his own wrong has created.” *Coastal Fuels*, 79 F.3d at 200 (quoting *Bigelow*, 327 U.S. at 256); see *J. Truett Payne Co.*, 451 U.S. at 566 (“any other rule would enable the wrongdoer to profit by his wrongdoing at the expense of his victim . . . by rendering the measure of damages uncertain”) (quotation and citation omitted).

WORLDCOM’S DAMAGES

10. WorldCom is entitled to compensation for losses sustained as a result of the illegal 1-800-4USWEST service.³ The compensation recovered by WorldCom should put it in a position economically equivalent to the position it would be in if U S WEST had not provided the illegal service. Therefore, WorldCom should receive compensation equal to the profits that it would have earned but for U S WEST’s illegal action.

11. As discussed above in paragraph 6, the 1-800-4USWEST service carried calls that would otherwise have been carried by WorldCom. WorldCom’s damages are thus the profits it would have earned on the calls that it would have carried but for the 1-800-4USWEST service. These lost profits are the revenue from the calls that the Company would have handled but for the 1-800-4USWEST service, less the costs that WorldCom avoided by not carrying these calls.

³ See Declaration of David W. Sosa for paragraphs 10 through 29 (attached hereto as Exhibit 2).

12. The starting point in calculating these lost profits is to estimate the call volume that WorldCom lost as a result of the 1-800-4USWEST service. There are two possible ways to make this calculation. One approach would be to estimate WorldCom lost call volume on the basis of actual 1-800-4USWEST traffic. The other approach would be to estimate lost call volume on the basis of WorldCom calling patterns.

13. Relying on actual 1-800-4USWEST traffic produces a reliable estimate of WorldCom's lost call volume. U S WEST has information about its actual 1-800-4USWEST traffic, and WorldCom is seeking the relevant information through discovery. As described below, it is a relatively straightforward task to estimate WorldCom's lost call volume based on 1-800-4USWEST call volume.

14. Without U S WEST's data on actual 1-800-4USWEST traffic patterns, WorldCom would be forced to use WorldCom's own traffic patterns to estimate call volume lost to the 1-800-4USWEST service. However, a wide variety of changing competitive and economic factors affect the volume of any type of service provided by WorldCom. The impact of these factors varies by geographic area and time, and geographic and seasonal and annual fluctuations are substantial. The number and length of calling card calls using WorldCom service are influenced by a number of factors, of which U S WEST's unlawful 1-800-4USWEST service is only one. Moreover, WorldCom has only limited information about the marketing and pricing of 1-800-4USWEST service and how they changed over time. As a practical matter, WorldCom cannot control for all these other factors and use changes in the volume of particular types of WorldCom services to determine the extent to which WorldCom's business declined because U S WEST illegally offered 1-800-4USWEST service. Although readily available information about the volume of WorldCom's calling card calls inside and outside U S WEST's region does not permit

WorldCom to quantify its damages, this information is not inconsistent with diversion of calling card traffic to the 1-800-4USWEST service. WorldCom is prepared to submit more specific information about its calling card service to the Commission subject to an appropriate protective order, and a proposed protective order is attached as Exhibit 3 to this Supplemental Complaint.

15. In the discovery requests that WorldCom is submitting with this Supplemental Complaint, WorldCom seeks information about the number of minutes and calls handled through U S WEST's 1-800-4USWEST service from the time U S WEST first began to provide it until the present. With that basic information, WorldCom can start to compute its damages for that period. These damages fall into two categories. (Another category of damages – arising out of U S WEST's jumpstart in the in-region interLATA business – is discussed in paragraphs 28-29 below.)

16. *In-Region InterLATA Traffic.* The first category of WorldCom's damages involves interLATA traffic that originated in U S WEST's in-region states and that was carried by U S WEST's unlawful 1-800-4USWEST service. This traffic includes, for example, (a) calling card calls, (b) collect calls, (c) third-party billed calls, and (d) directory assistance calls. As the Commission has already determined, U S WEST provided in-region interLATA service in violation of the express prohibition of section 271. To the extent that U S WEST diverted from WorldCom interLATA calls originating in U S WEST's region, WorldCom was indisputably damaged.

17. *Related Traffic.* The second category of WorldCom's damages involves other traffic that U S WEST could in principle lawfully carry but that U S WEST would in fact not have carried but for its unlawful provision of 1-800-4USWEST service. For convenience, that traffic will

be referred to as “related traffic.” Although WorldCom will confirm this through discovery, WorldCom expects that related traffic carried by the 1-800-4USWEST service consists primarily of (a) interLATA and intraLATA traffic that originated in out-of-region states, and (b) intra-LATA traffic that originated in in-region states. Related traffic may also include other types of calls, such as nationwide directory assistance calls originating in in-region states that U S WEST may currently lawfully provide under some circumstances. *See, e.g., Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance*, 14 FCC Rcd 16252 (1999).

18. U S WEST unlawfully diverted related traffic from WorldCom by providing unauthorized in-region interLATA services in a bundle with otherwise lawful services. U S WEST’s marketing and other factors indicate that the predominant use of 1-800-4USWEST service is for calling card calls, although the service was also used to a lesser extent for collect and other types of calls. *See 1-800-4USWEST Order* ¶ 4 (describing marketing of 1-800-4USWEST service for calling card calls). In WorldCom’s experience, customers tend to use the same calling card for all types of calls – in-state, interstate, and international. For example, it would not occur to customers to use one calling card for intraLATA toll calls and a different calling card for in-state interLATA tolls calls. Indeed, in an earlier filing in this proceeding, U S WEST agreed that most consumers have no idea whether a particular in-state call crossed LATA boundaries because most consumers do not know where those boundaries are or what they mean. *See Qwest Corporation Supplemental Opening Brief on the Relevance of the Ameritech Calling Card Order*, at 16 n.42 (dated Dec. 8, 2000). In addition, as the Commission recognized, the record indicates that the overwhelming majority of users of 1-800-4USWEST service likely purchased in-region local service from U S WEST: U S WEST designed and developed this combined offering “for its

local service customers;" U S WEST marketed 1-800-4USWEST service primarily, if not exclusively, to its local subscriber base; and this illegal service "allows U S WEST, prior to gaining section 271 approval, to build up goodwill as a full-service provider with its local-service customers." *See 1-800-4USWEST Order* ¶¶ 3, 8, 14, 18, 21. Thus, the base to which U S WEST marketed 1-800-4USWEST service was comprised of customers in U S WEST's region, not customers who were based or billed outside U S WEST's region and who did not otherwise use U S WEST service.

19. For these reasons, if U S WEST did not include prohibited in-region interLATA service among the services it provided through 1-800-4USWEST service, consumers would not have called 1-800-4USWEST to place toll calls that originated out-of-region or to place intra-LATA calls in in-region states. Instead, consumers would have used carriers authorized to provide interLATA services in the U S WEST region for out-of-region toll calls and in-region intra-LATA toll calls. U S WEST's bundling of in-region interLATA services with authorized services caused it to divert out-of-region toll calls and in-region intraLATA toll calls as well as in-region interLATA calls from legitimate interLATA carriers like WorldCom. Accordingly, WorldCom lost profits from related traffic diverted by U S WEST as well as profits from in-region interLATA traffic diverted by U S WEST.

OUTLINE OF WORLDCOM'S METHODOLOGY

20. The methodology that WorldCom will use to calculate lost profits from in-region interLATA and related traffic diverted by U S WEST's unlawful 1-800-4USWEST service consists of four steps. The basic methodology is the same for both in-region interLATA traffic and related traffic.

21. The first step in WorldCom's methodology is to determine the volume – in minutes and calls – for each type of call included in U S WEST's 1-800-4USWEST service. WorldCom needs information about both minutes and calls because some charges for these calls are calculated per minute and other charges are calculated per call. As explained above, in order to complete this initial step, WorldCom needs information now exclusively in U S WEST's possession.

22. The second step is to calculate the share of U S WEST's 1-800-4USWEST business that WorldCom would have won if U S WEST had not unlawfully provided 1-800-4USWEST service. Because WorldCom faces intense competition in all portions of the long-distance market, it is reasonable to expect that competitors like AT&T, Sprint, Qwest (before it acquired U S WEST), Teleglobe/Excel, and talk.com would have captured some of the business but for U S WEST's illegal conduct.

23. To the extent reasonably possible, WorldCom will estimate the share of 1-800-4USWEST traffic that it would have carried but for the illegal action on a service-by-service basis using market information about the particular service. Although the 1-800-4USWEST service diverted traffic from WorldCom and other legitimate providers of interLATA services, that service likely did not change overall consumer demand for the services at issue. For some services, reliable market share information may be available. For other services, such information

may not be available, and it may be more reasonable to estimate WorldCom's share of 1-800-4USWEST traffic based on broader market share information. For example, the Commission has analyzed services provided to mass market customers separately from services provided to larger business customers. *See, e.g., In the Matter of Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, 15 FCC Rcd 14032, 14088-89 ¶ 102 & n.,253 (2000). In the mass markets segment, WorldCom markets calling card services primarily to its pre-subscribed long distance customers. If reasonably reliable market share data for a mass market calling card service is unavailable, WorldCom will calculate its share of the 1-800-4USWEST traffic on the basis of WorldCom's share of the broader long distance market. *See, e.g., Trends in Telephone Service*, Table 11.3 (March 2000) (WorldCom's share of total 1998 toll service revenues for long distance carriers was 25.6 percent) (available at <http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend100.pdf>). WorldCom is seeking market share information through discovery from U S WEST, which may have its own estimates of shares of relevant markets.

24. The third step in WorldCom's methodology is to calculate the profits that WorldCom would have earned on the calls that U S WEST diverted to itself by illegally providing 1-800-4USWEST service. WorldCom's lost profits are a function of its lost revenues and the costs that WorldCom avoided by not carrying the diverted calls. Calculation of lost revenues is a straightforward task: the applicable per-minute or per-call charge is applied to each call or minute wrongfully diverted by U S WEST from WorldCom.

25. The costs that WorldCom avoided by not carrying the diverted calls are then subtracted from WorldCom's lost revenues. Examples of avoided costs include (a) originating access charges, (b) terminating access charges for domestic calls and international settlements for international calls, (c) avoided interLATA transport costs (reflecting any additional capacity that WorldCom did not have to add during peak calling periods because traffic was diverted away from WorldCom by 1-800-4USWEST service), (d) avoided billing and collection costs, and (e) bad debt charges for the diverted calls (such as uncollected bills). Other avoided costs may include certain direct marketing costs (such as costs associated with telemarketing, direct mail advertising, or fulfillment), customer service costs, and operational costs such as operator service. WorldCom cannot estimate these avoided costs until U S WEST provides complete responses to WorldCom's discovery requests.

26. Thus WorldCom's lost profits methodology would multiply (a) the number of calls or minutes unlawfully diverted from WorldCom by (b) the per-minute or per-call rate charged by WorldCom at the time of the diversion and then subtract from that number (c) WorldCom's avoided costs in order to determine (d) WorldCom's lost profits.

27. The last step in WorldCom's methodology is to add prejudgment interest. "The Commission's authority to award prejudgment interest in a section 208 complaint proceeding is well established under the Act." *Rainbow Programming Holdings, Inc. v. Bell Atlantic-New Jersey, Inc.*, 15 FCC Rcd 11,754, 11,763 ¶26 n.57 (1999) (citations omitted). "In deciding whether to award prejudgment interest, the Commission is guided by the law applied by federal courts . . . and is therefore guided by considerations of fairness." *Id.* "The IRS rate of interest for refunds and additional tax payments is the appropriate interest rate for this type of a proceeding, because the rate is easily obtainable and revised on a regular basis." *Id.* at n. 58. Here, an award of pre-

judgment interest is fair because it is necessary to compensate WorldCom for the time value of the profits it lost as a result of U S WEST's illegal conduct, because WorldCom acted promptly and expeditiously at all times in connection with this complaint, and because U S WEST continued to provide 1-800-4USWEST service for several years after WorldCom filed its complaint and assumed the risk that the service would be found to violate section 271. Accordingly, the Commission should award interest for each month in which WorldCom lost profits because U S WEST unlawfully diverted traffic, beginning at the end of the month in which the traffic was diverted and concluding on the date U S WEST provides full payment to WorldCom. *See id.* ¶ 26

“JUMPSTART” DAMAGES

28. In addition to damages for business lost directly to U S WEST's unlawful service, WorldCom suffered a different kind of injury. As the Commission concluded, U S WEST gave itself a “significant jumpstart” in the long-distance market by offering 1-800-4USWEST service, and “once U S WEST receives Commission authority to offer in-region, long distance service, the 1-800-4USWEST customers who receive local service from U S WEST will be more inclined to select U S WEST as their presubscribed long distance carrier as well.” *1-800-4USWEST Order* ¶¶ 13-14, 17. U S WEST's illegal provision of 1-800-4USWEST service positioned it to substitute its own interLATA service once it gets section 271 authority, and U S WEST has built up “goodwill as a full service provider with its local-service customers, who can place their long distance calling-card calls through the Service.” *Id.* ¶ 14; *see id.* ¶ 17 (service “provides U S WEST with a significant competitive advantage in building goodwill with the 1-800-4USWEST customers”). Therefore, the unlawful provision of this service may enable U S WEST to capture more traffic from WorldCom and other providers of interLATA services than U S WEST would have gained if it had not violated section 271.

29. WorldCom is not yet in a position to determine the extent of U S WEST's jumpstart and thereby calculate associated damages because WorldCom needs two types of information from U S WEST. The first is additional information about whether and when U S WEST ceased its violation of section 271, and WorldCom is seeking discovery on this issue. Second, WorldCom needs to know when U S WEST expects to satisfy the requirements of section 271 and apply for and obtain section 271 authority for each of its in-region states, and how fast U S WEST expects its in-region interLATA business to grow after it obtains section 271 authority. The amount of time between the cessation of U S WEST's violation of section 271 and introduction of lawful originating in-region interLATA service will affect the extent to which U S WEST will benefit from its illegal actions. Until WorldCom obtains through discovery this critical information about U S WEST's plans, WorldCom is not able to formulate a methodology for calculating damages resulting from U S WEST's jumpstart.

PROPOSED FINDINGS OF FACT

30. U S WEST marketed 1-800-4USWEST service as an alternative to long-distance services offered by providers of interLATA service. *1-800-4USWEST Order* ¶¶ 6 n.17, 24 & n.67.

31. U S WEST specifically advertised savings off of MCI's calling card rates. *1-800-4USWEST Order* ¶ 24 n.67.

32. The 1-800-4USWEST service competed against other carriers' comparable services.

33. "[T]he 1-800-4USWEST service permits U S WEST to obtain material benefits uniquely associated with the ability to include a long distance component in the 1-800-4USWEST service." *1-800-4USWEST Order* ¶ 14.

34. "[O]nce U S WEST receives Commission authority to offer in-region, long distance service, the 1-800-4USWEST customers who receive local service from U S WEST will be more inclined to select U S WEST as their presubscribed long distance carrier as well." *1-800-4USWEST Order* ¶ 17.

35. The material benefits obtained by U S WEST through the unlawful provision of 1-800-4USWEST service helped U S WEST to compete against legitimate providers of interLATA service.

36. If U S WEST had not offered 1-800-4USWEST service in violation of section 271, all or almost all of the calls made using 1-800-4USWEST service would have been made using the services of legitimate providers of interLATA services. If customers had not used 1-800-4USWEST for these calls, they would have placed them using the services of legitimate inter-LATA carriers.

37. If U S WEST had not offered 1-800-4USWEST service in violation of section 271, some of the calls made using 1-800-4USWEST service would have been made using the services of WorldCom.

38. WorldCom has a substantial share of mass market and business traffic for calling card, collect, and other types of calls in the states in which U S WEST is the incumbent local exchange carrier.

39. U S WEST's 1-800-4USWEST service carried calls that would otherwise have been made using WorldCom's competing services.

40. U S WEST diverted calls from WorldCom when it offered 1-800-4USWEST service.

41. It is reasonable for WorldCom to estimate the amount of its historical damages using a four-step methodology: (a) determine the volume – in minutes and calls – for each type of call included in the 1-800-4USWEST service; (b) estimate the share of U S WEST's 1-800-4USWEST business that WorldCom would have won if the caller had not used 1-800-4USWEST service; (c) calculate the profits that WorldCom would have earned on the calls that U S WEST diverted by illegally providing 1-800-4USWEST service; and (d) add prejudgment interest based on the IRS rate of interest for refunds and additional tax payments.

42. WorldCom will supplement its Proposed Findings of Fact after it has obtained necessary discovery from U S WEST and been able to compute its damages using the methodology detailed in this Supplemental Complaint.

PROPOSED CONCLUSIONS OF LAW

43. WorldCom has the burden to prove by a preponderance of the evidence that it suffered damage as a result of U S WEST's illegal conduct.

44. WorldCom has proved by a preponderance of the evidence that it suffered damage as a result of U S WEST's unlawful provision of 1-800-4USWEST service.

45. The proper measure of damages is the profits that WorldCom has lost or will lose because U S WEST has offered 1-800-4USWEST service in violation of section 271.

46. WorldCom may estimate damages using a reasonable formula based on facts established in the record.

47. WorldCom's damages include profits lost from both (a) in-region interLATA calls unlawfully diverted from WorldCom by 1-800-4USWEST service and (b) other types of calls diverted from WorldCom by 1-800-4USWEST service because customers would not have used 1-800-4USWEST service for those calls unless U S WEST provided both in-region interLATA and other services together in a bundled service offering.

48. WorldCom is entitled to an award of prejudgment interest based on the IRS interest rate for refunds and additional tax payments on damages that the Commission determines WorldCom suffered before the date of the Commission's final order in this proceeding.

49. WorldCom is entitled to recover damages to the extent that U S WEST's unlawful provision of 1-800-4USWEST service is reasonably likely give U S WEST a jumpstart in the long-distance market when it obtains section 271 authorization and to enable U S WEST to capture more business from WorldCom than it would be able to capture if it had not illegally offered 1-800-4USWEST service.

50. WorldCom will supplement its Proposed Conclusions of Law with respect to the amount of its damages after it has obtained necessary discovery from U S WEST and been able to compute its damages using the methodology detailed in this Supplemental Complaint.

INFORMATION DESIGNATION

51. WorldCom expects that it will generate, in light of information obtained from U S WEST in discovery, some individualized analyses of information contained in WorldCom data compilations to estimate its damages. WorldCom does not generally create or obtain in the ordinary course of business documents that it could use directly in any of the steps in the methodol-

ogy described in this Supplemental Complaint. At this stage, WorldCom cannot identify all of the documents, data compilations and tangible things in its possession, custody or control relating to its damages until U S WEST provides the information exclusively within U S WEST's possession that WorldCom needs to estimate its damages. WorldCom does maintain documents containing information about services that compete with U S WEST's 1-800-4USWEST service, including, for example, (a) documents prepared by the finance group in WorldCom's mass markets organization that contain information concerning WorldCom's rates, revenues, and costs, and (b) documents obtained by the marketing group in WorldCom's mass markets organization that contain information about the market share of competing interexchange carriers.

52. WorldCom has not yet conducted a comprehensive inventory of all documents in the two categories identified in the preceding paragraph, as well as documents concerning market shares of the relevant services. WorldCom is prepared to conduct a thorough search in order to provide a full and complete response to discovery that U S WEST may reasonably wish to conduct, and it would be far more efficient to conduct such a search once as part of the document collection and production process in response to specific discovery requests.

53. WorldCom's mass markets organization in Pentagon City, Virginia, maintains databases containing information about the volume of services that competed with U S WEST's 1-800-4USWEST service at least during the latter part of the relevant period. This information is proprietary and confidential, and WorldCom would object to producing it except pursuant to an appropriate protective order.

54. The rates for WorldCom services that competed with U S WEST's 1-800-4USWEST service have been tariffed, and information about WorldCom's tariffed rates is publicly avail-